

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

STATUS CONFERENCE
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Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
June 16, 2021
Commencing at 4:00 P.M.

B E F O R E:

SPECIAL MASTER THE HONORABLE
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1 (PROCEEDINGS held remotely via Zoom videoconference before
2 Special Master The Honorable Thomas I. Vanaskie at 4:00 P.M.)

3 JUDGE VANASKIE: I see Mr. Slater. You are ready to
4 go?

5 MR. SLATER: Always.

6 JUDGE VANASKIE: Who will be speaking on behalf of the
7 defense today?

8 MR. GOLDBERG: Your Honor, this is Seth Goldberg.
9 I'll be happy to take the lead and then pass it off as
10 necessary.

11 JUDGE VANASKIE: Well, why don't we get started then.
12 There are a few more ringing in but we can get started.

13 We'll start with, I was going to go through the
14 defense's order first, if that's okay, primarily because that
15 letter was so short and I thought, well, maybe this is a good
16 sign. We'll see how this conference goes.

17 In the defense letter, the first item on the agenda is
18 really I think the last item on the plaintiffs' letter which is
19 Humana's proposed motion.

20 So who will be addressing this for the defense?

21 MR. RUBENSTEIN: Good afternoon, Your Honor. This is
22 Brian Rubenstein from Greenberg Traurig.

23 JUDGE VANASKIE: So Humana wants to file a motion, is
24 that what I understand? I mean, I haven't seen a motion. It
25 wants to file a motion to stay discovery?

1 MR. RUBENSTEIN: Sorry, Judge, I don't know if you can
2 hear me. My Internet is just a little unstable it looks like.

3 No, there is no motion pending.

4 JUDGE VANASKIE: Okay. You are coming through fine on
5 my end.

6 MR. RUBENSTEIN: Oh, good.

7 JUDGE VANASKIE: So what's this all about then?

8 MR. RUBENSTEIN: So, I guess Humana has reached out to
9 the defendants to ask if we would agree to stay their case,
10 which the manufacturing defendants have not agreed to. And we
11 actually were a little surprised to see this on the agenda for
12 today. But if they would like to have their stay then the
13 proper --

14 JUDGE VANASKIE: Is this premature? I'm sorry.

15 MR. RUBENSTEIN: Yes, I think the proper course would
16 be for them to file a motion and then let the motion process
17 play out.

18 JUDGE VANASKIE: All right. You will see if you can
19 reach some agreement. I don't think there's a need to have any
20 discussion on this today.

21 Mr. Slater, are you speaking on behalf of plaintiffs
22 on this issue? I'm not even sure, is somebody here for Humana?

23 MR. SLATER: There is. And I think Conlee Whiteley
24 was going to also address it, Your Honor.

25 JUDGE VANASKIE: All right. We'll hear from Ms.

1 Whiteley.

2 MS. WHITELEY: Good afternoon, Your Honor. This is
3 Conlee Whiteley. And my colleague, Ben Waldman, is also on.
4 He represents Humana and he can answer any specific questions
5 as to Humana. But the reason it's before you today is I
6 believe that Humana felt that motion practice might be
7 premature and thought it would be better to go through
8 leadership to have this come to the attention of the Court, and
9 not to ask for an advisory opinion but just, if nothing else,
10 to ask procedurally how you would like to have it handled. And
11 they have prepared a motion and it could be filed momentarily
12 but they did not want to engage in motion practice if that was
13 not your preference.

14 JUDGE VANASKIE: I see. All right.

15 Mr. Rubenstein, you believe this should go through
16 motion practice?

17 MR. RUBENSTEIN: I believe so. I'm not sure what
18 other -- what other avenue there would be. You know, we've had
19 some meet and confers and we've not been able to resolve the
20 issue, so I'm not sure what other avenue there is other than a
21 motion.

22 JUDGE VANASKIE: What time urgency exists with respect
23 to this particular matter?

24 MR. RUBENSTEIN: I don't think there is any particular
25 urgency.

1 JUDGE VANASKIE: All right. From the plaintiffs'
2 perspective?

3 MS. WHITELEY: We do not think there's any particular
4 time urgency as well, Your Honor. There's really been nothing
5 going on and that's why we thought a stay would be unobjectable
6 so...

7 JUDGE VANASKIE: Well, apparently, it is objectionable
8 so we will go through motion practice on this. All right?

9 MR. RUBENSTEIN: Thank you, Your Honor.

10 JUDGE VANASKIE: If it needs to be resolved faster
11 than motion practice allows, you all will let me know.

12 MR. RUBENSTEIN: Okay.

13 JUDGE VANASKIE: All right. Thank you.

14 MR. RUBENSTEIN: Thank you, Your Honor.

15 JUDGE VANASKIE: The next item on the agenda letter
16 from Greenberg Traurig is the Hetero discovery and privilege
17 log update.

18 So who wants to address this issue for the defense?

19 MR. ABRAHAM: Good afternoon, Your Honor. This is
20 Eric Abraham from Hill Wallack. I represent Hetero Labs. I
21 will be responding on behalf of Hetero Labs. And I'm joined by
22 Nakul Shah who is here to steady my hand in case I goof
23 anything up.

24 JUDGE VANASKIE: All right. And I read your letter, I
25 read the defense letter, I read the plaintiffs' letter, and it

1 looks like maybe you all have a different perspective of what
2 is going on here.

3 So let me hear from you first, Mr. Abraham.

4 MR. ABRAHAM: Thank you, Judge.

5 We -- some of these items are sort of tying up
6 loose-end-type issues; some are on the more important end of
7 the spectrum. We had a meet and confer with Mr. Parekh at 2:30
8 this afternoon eastern time, whatever that is wherever Behram
9 is, and we reached agreement on a path forward on the
10 predominantly open issues.

11 I think some of the difficulties we've had, Judge, are
12 when we have meet and confers, frequently what we hear is,
13 well, we've seen these types of documents in discovery from
14 other defendants so you must have something similar. And it's
15 helpful to us to kind of hear it framed that way because it
16 does help us talk to our client about it, but it's just not
17 always the case. So what we've focused upon is, how can we
18 make sure that our clients have produced what it is that's
19 responsive.

20 The second issue that we've had, Judge, is that some
21 of the documentation that plaintiffs have sought has been in
22 the hands of a third-party testing laboratory called Analys
23 Labs, and we can do our best to work with Analys Labs to
24 produce what we think is responsive to plaintiffs, but what we
25 discovered in working with Analys Labs this past week is they

1 hadn't sent us everything that they should have, which we've
2 now obtained, and we have either produced or are producing the
3 balance of that from that third party to Mr. Parekh. So at
4 this point --

5 JUDGE VANASKIE: Okay, good. Okay.

6 MR. ABRAHAM: All right, I was just about to wrap up.

7 So at this point we do have a few remaining
8 depositions scheduled. We have a path forward to get the
9 plaintiffs what they need in advance of those depositions. In
10 fact, we designed a -- today, designed a 30(b)(6) additional
11 topic that I've consented to respond to that will put to bed
12 one of the issues that we have been kind of wrestling over how
13 to fix.

14 JUDGE VANASKIE: All right.

15 MR. ABRAHAM: I think we are appreciative, Judge, that
16 you've indulged us as we've tried to tie up these last loose
17 ends and get plaintiffs what they need and I think we are right
18 there at the end.

19 JUDGE VANASKIE: Okay. Let's hear from plaintiff on
20 this.

21 MR. PAREKH: Good afternoon, Your Honor.

22 I don't think we're that far apart in terms of our
23 positions. I mean, I think today was actually very helpful in
24 actually focusing down on the documents that are still missing.
25 Our concern is that we've done this before and focused down on

1 documents that are missing and then we've been told that
2 they've been produced and then when we look at what's been
3 produced, it's been a fraction of what we really needed.

4 The problem, of course, is that we have expert reports
5 due. And we have been working on putting together the expert
6 reports related to Hetero, and we're still being prejudiced by
7 the fact that we don't have these documents. And these
8 documents are not, you know, magic documents that we somehow
9 discovered the existence of late here. I mean, they're really,
10 really basic documents.

11 For example, one of the things that they were going to
12 produce are the batch manufacturing record, chromatograms for
13 G.C. testing, chromatography testing. These are documents that
14 were supposed to have been produced, you know, months and
15 months and months ago and were produced by all of the other
16 defendants and it wasn't until we finally said yesterday or the
17 day before yesterday, it's like, look, everyone else has
18 produced these. Where are they? We don't have them from you.
19 You know, we were now given an assurance today that, yes, they
20 found them, they are in paper form as we said they were and
21 that they're going to be produced. But, I mean, we shouldn't
22 have had to do any of that, right? You know, these are
23 documents that are responsive to the request and should have
24 been produced way before the November 2020 cutoff.

25 And so, you know, that's -- we've had to do a lot of

1 extra work in order to fix the problems that have been caused
2 by the fact that Hetero simply didn't make the production that
3 it was supposed to produce in response to our request for
4 production. And although we're appreciative and we do have a
5 path forward, you know, today, we're not confident necessarily
6 that that will fix everything because we've had a path forward
7 before and it hasn't. Hopefully it does. I mean, you know,
8 I'm an optimist. I like to always think that, you know, things
9 will fix things, but we do have a history where it hasn't.

10 So what we would like to do is what we requested,
11 which is, you know, have a firm cutoff date that says, okay,
12 after this date, we still want the documents, we still want you
13 to produce those documents, but you can't go back and, you
14 know, three months from now or five months from now produce
15 other documents and say, hey, now we have these other documents
16 and we're going to rely on them in order to dispute what your
17 expert said in their report or to, you know, dispute our
18 version of the story on summary judgment. And that's the
19 concern that we have.

20 We believe we understand what happened based upon the
21 documents that have been produced and the documents that are
22 missing. But if all of a sudden some new documents show up, we
23 don't believe Hetero should be able to rely on those documents.

24 JUDGE VANASKIE: Well, I understand that. I guess the
25 question is, when do we reach that point in time? Are we there

1 now or is there a date in the future? When is this path
2 forward to be completed?

3 MR. PAREKH: I mean, we believed we were there now.
4 We do have an agreement for, you know, some specific documents
5 to be produced in the next week. So perhaps, you know, a date
6 of next Friday for that cutoff to occur, rather than today, I
7 think would be a compromise. And, you know, anything that is
8 produced after next Friday, you know, they can't use as part of
9 their defense.

10 THE COURT: All right. Mr. Abraham, do you want to
11 address that?

12 MR. ABRAHAM: Yes, sir. We're doing our best, which
13 is I think what the law requires of us. There is a very robust
14 body of law in the District of New Jersey within the Third
15 Circuit that talks about the circumstances that would permit
16 the type of preclusive order that Mr. Parekh has just talked
17 about. We've not had that type of history between us; he has
18 not made the type of showing those cases require; it's not been
19 presented by formal motion. I don't think we're there yet,
20 Judge.

21 What we've done is we agree with Mr. Parekh that if
22 any of these additional documents are not produced by the time
23 he takes the deposition of the witness to which they're
24 relevant, he's asked us and we've agreed to keep that
25 deposition open. But to start entering orders today or

1 deadlines today that would make it such that we would be
2 precluded from relying upon documents that may be discovered in
3 the future is simply not appropriate precisely because we don't
4 know what the circumstances would be that would lead to the
5 discovery of those documents in the future.

6 What I can tell you, Judge, is we don't practice law
7 by process of sandbagging. We've been doing everything that we
8 can to work with plaintiffs to make sure that we produced the
9 documents to them. We've had our own difficulties because of
10 having produced documents to Mr. Parekh and having identified
11 them by Bates number and plaintiffs haven't looked at the list.
12 I don't fault them for that. This is a big case and
13 everybody's busy. We're doing our level best with our client,
14 Judge, to produce responsive documents. I appreciate
15 plaintiffs' patience so far. I don't think we're at the point
16 where they've demonstrated they're being prejudiced, so I think
17 it's premature to set that type of a deadline.

18 Thank you.

19 JUDGE VANASKIE: Yes, you know -- Mr. Parekh, did you
20 want to say anything else on this?

21 MR. PAREKH: No, Judge.

22 JUDGE VANASKIE: I'm not inclined to set a full-stop
23 deadline. You know, I'm going to encourage you all to continue
24 to work the way you have worked. I know it's frustrating on
25 plaintiffs' part.

1 MR. ABRAHAM: As do we, Judge. I agree. As do we.

2 JUDGE VANASKIE: So no hard stop. There may come a
3 point in time when something that gets produced, there will
4 have to be an explanation, as you said, Mr. Abraham, for how it
5 came about that it was just discovered and just produced and it
6 may be sufficient, it may not be sufficient, it might be
7 appropriate to say a sanction is warranted then, but it's all
8 contextual and I am not going to impose an arbitrary deadline
9 at this point in time.

10 I encourage you to continue to work forward. I'm
11 pleased to hear, Mr. Parekh, that you have a path forward and I
12 know you've said there have been paths forward before but
13 please pursue it and, hopefully -- I'm an optimist as well.
14 I'm hoping this all gets worked out and it doesn't require any
15 intervention. All right. Thanks.

16 Anything else on Hetero?

17 MR. PAREKH: No, Your Honor. Thank you.

18 MR. ABRAHAM: No, sir.

19 JUDGE VANASKIE: Thanks.

20 The next item was the protective order motion to
21 compel production of Mr. Chen's custodial file and the
22 cross-motion for a protective order to preclude that.

23 I did issue a decision yesterday on that issue. Did
24 you want to pursue that any more today, Mr. Goldberg?

25 MR. GOLDBERG: I'm sorry, Your Honor. We do not have

1 anything to pursue today.

2 JUDGE VANASKIE: Okay.

3 MR. GOLDBERG: We have Your Honor's order and we're
4 evaluating it. Thank you.

5 JUDGE VANASKIE: Okay. I know it just came out. It
6 took much longer than it should have.

7 And there's a request on the plaintiffs' side for some
8 estimate of the number of documents that would be produced.
9 This might be on the -- make sure I'm getting this -- yes, they
10 want an estimate of the number of pages, et cetera, a timeline
11 for production. Are you there yet in terms of what might be
12 reasonable?

13 MR. GOLDBERG: Your Honor, I'm going to turn that
14 specific question over to my colleague, Jessica Priselac.

15 JUDGE VANASKIE: Okay. Thank you.

16 Ms. Priselac.

17 MS. PRISELAC: Good afternoon, Your Honor.

18 JUDGE VANASKIE: Good afternoon.

19 MS. PRISELAC: Just by way of brief explanation, I
20 think you read in our motion papers, Your Honor, that because
21 of the security and confidentiality concerns related to Mr.
22 Chen's files and also relatedly his chief of staff, Maggie
23 Kong's files, we -- our client and vendor needed to procure
24 certain hardware, specifically what's called an air-gapped
25 laptop, in order to ensure that what was collected would keep

1 secure.

2 Unfortunately, due to the chip shortage in Southeast
3 Asia, which is where most chips coming into China come from,
4 they were told that they would not be able to get this
5 equipment until July. Understanding that Your Honor had given
6 us this order, what the vendor and the client did is go back,
7 find some older laptops and air-gapped laptops they had and
8 actually refurbished them to suit this purpose which took a few
9 weeks.

10 So the good news is, Your Honor, we now have the
11 equipment we need and they can start collecting June 21st. But
12 the bad news, Your Honor, obviously, is that the collection has
13 not started. The isolation and identification of the documents
14 has taken place but not the actual collection processing.

15 JUDGE VANASKIE: Okay.

16 MS. PRISELAC: So we do think, though, Your Honor, if
17 we work hard, we believe we'll be able to get the production to
18 the plaintiffs three weeks from Monday. And, obviously, we can
19 keep the Court updated on that process as it continues.

20 JUDGE VANASKIE: Okay. So that will be like July 12,
21 something like that?

22 MS. PRISELAC: I'm looking at a calendar right now,
23 Your Honor.

24 Yes, that's correct. I'm sorry.

25 JUDGE VANASKIE: Go ahead.

1 MS. PRISELAC: Your Honor, actually -- yes, that's
2 correct. I just wanted to make sure our date was right.

3 JUDGE VANASKIE: I was wondering what the hardware
4 problems were. I saw that in the letter.

5 MS. PRISELAC: Yes, Your Honor.

6 JUDGE VANASKIE: That's very interesting and --

7 MS. PRISELAC: Yes, I've learned much more about chip
8 manufacturing than I ever thought I would, Your Honor.

9 JUDGE VANASKIE: Or cared to know.

10 Is Mr. Slater going to address this question?

11 MR. SLATER: Yes, Your Honor.

12 I'm a little disappointed --

13 JUDGE VANASKIE: Sure.

14 MR. SLATER: -- to be hearing this for the first time
15 now when Your Honor ordered ZHP to commence this process, I
16 don't have the date in front of me but it was, I'm guessing --
17 I don't have the date, it was at least a month ago, I think,
18 probably longer, when Your Honor said, while the motion's
19 pending that ZHP should collect and process that custodial
20 file. So I'm really at a loss as to why we're being told this
21 today after the motion was decided. I think that's very
22 disappointing and it's frustrating because we, obviously, want
23 to get these documents as soon as we can.

24 I don't know anything about chips. The only chips I
25 know are chips at a casino and I'm usually losing them, not

1 getting them, so... But, you know, I don't know what any of
2 that means. I don't -- I don't even know -- from what counsel
3 said, I can't tell if the documents have been collected or not,
4 how large the custodial file is, I just don't know. So I'm
5 really -- I'm at a loss a little bit. It's hard to respond to
6 something like that because there's, obviously, two ways to go.
7 One way is to ask for a very strict sort of resolution of this;
8 and the other is to try to be practical about it because,
9 ultimately, what really matters to us is, obviously, your
10 decision on the next motion and the timing we'll have, if we do
11 prevail on that and we can depose him, obviously, then these
12 documents become very important and that enters into the
13 timeline for that. So I'm certainly practical and
14 understanding of where the endgame is here, if that makes
15 sense.

16 JUDGE VANASKIE: All right. I'm glad Mr. Goldberg is
17 here as well.

18 With respect to Mr. Chen's deposition, it occurred to
19 me that the documents that are produced from his custodial file
20 could be, could be very important, may only be duplicates of
21 what already has been produced, and may not be all that
22 important or no surprises in terms of the documentary evidence.
23 And so I was wondering -- I'm wondering out loud here, that's a
24 dangerous thing to do -- whether it made sense to defer
25 decision on Mr. Chen's deposition until after you have his

1 documents.

2 MR. SLATER: Your Honor, if it helps, I don't -- I
3 would not want to because we don't think that one thing really
4 determines the other. I mean, the standard's very clear.
5 You've touched on it already in your initial decision on the
6 custodial file. I don't think that that would be
7 determinative.

8 So from the plaintiffs' perspective, you know, we're
9 eager for your resolution of that motion so that if we do
10 prevail, we can start getting ready for that and start thinking
11 it through because we, obviously, want to get ourselves as
12 prepared as we can.

13 JUDGE VANASKIE: All right. Mr. Goldberg or Ms.
14 Priselac? I don't want to preempt Ms. Priselac.

15 MR. GOLDBERG: Well, Your Honor, on the question you
16 just asked, it's interesting, you know, we do expect that his
17 custodial file will not provide information that would warrant
18 his deposition, and we think we have presented a compelling
19 basis for Your Honor to deny the motion. It's -- we think that
20 if Your Honor waited, that the production of his custodial file
21 would further support our position on that motion and would
22 further demonstrate that he does not have unique information
23 that would be materially additive to the case.

24 So we would be in favor of Your Honor deferring that
25 decision but we also feel that we have made a significantly

1 compelling argument to warrant the granting of our apex
2 deposition motion.

3 JUDGE VANASKIE: Well, I do expect to issue a decision
4 very -- within the next few days, so I do expect that.

5 MR. SLATER: And, Your Honor, I'm sorry, just one
6 thing to add while you're getting ready to start --

7 JUDGE VANASKIE: Yes, my thoughts are moving. Go
8 ahead.

9 MR. SLATER: Just to put a little more nuance on this.
10 What is produced as his, quote, unquote, custodial file, just
11 to make it very clear why we don't think that would be
12 determinative of anything is, the question is what does the
13 person know, what was the person's involvement. I mean, those
14 are the issues that have been briefed for Your Honor. At no
15 point has either side briefed, well, you know, you're not going
16 to find documents in the custodial file that are going to add
17 something new because, frankly, it wouldn't be surprising if
18 there's not as many documents as one might think for reasons
19 that I probably don't have to get into in detail right now;
20 whereas we know he attended, for example, I will give one
21 example, many meetings that were very, very pivotal, very
22 substantive, where the witness who testified about it painted a
23 picture of a room where nobody took notes at all. So, that's
24 why I think, you know, he's obviously such an important witness
25 because he was leading this process and nobody was taking

1 notes. So, I would say that the lack of documents, if that is
2 what occurs, that certainly wouldn't militate against the
3 deposition. It would actually make it more necessary to depose
4 him.

5 JUDGE VANASKIE: Let me ask --

6 MR. GOLDBERG: Your Honor --

7 JUDGE VANASKIE: Go ahead. Go ahead, Mr. Goldberg.

8 MR. GOLDBERG: -- it's -- it really seems like an
9 inconsistent position. I mean, they want the production of the
10 custodial file in order to take his deposition and they've
11 asked for an extension in the schedule, now that the custodial
12 file will be produced, so that they can depose Mr. Chen on
13 those documents. We are confident that those documents will
14 not support or will not refute the notion that Mr. Chen is
15 truly an apex witness and that he does not have information
16 that would be unique and that would be unavailable from
17 lower-level employees and would not -- would further support
18 our motion. And so it seems a little bit inconsistent.

19 We do think Your Honor should defer that motion, but,
20 again, we feel like the record we've made on the original
21 papers that are before you are significantly compelling and
22 warrant precluding his deposition under the apex doctrine.

23 JUDGE VANASKIE: Thank you, Mr. Goldberg.

24 Mr. Slater, you mentioned in your letter needing to
25 reschedule the deposition because the decision on the documents

1 came late and you don't have them, it's going to take some time
2 to get them. I take it you'll be working -- if I allow the
3 deposition to go forward, you will be working on new dates?

4 MR. SLATER: Yes, Your Honor. I mean, it's not just
5 Mr. Chen's documents, to be clear. You, obviously, ordered a
6 lot of other documents --

7 JUDGE VANASKIE: Supplemental production.

8 MR. SLATER: -- we're going to talk about in a little
9 while, and, you know, we're looking at those as well. And, you
10 know, one of the interesting things in this case against ZHP
11 that's really developed is that it's not only what is there but
12 what becomes significant is what isn't there.

13 As Your Honor knows, there's an email that was sent to
14 some people that demonstrates that ZHP knew internally that
15 there was NDMA in the valsartan in July of 2017 at the latest.

16 JUDGE VANASKIE: In irbesartan or valsartan?

17 MR. SLATER: In valsartan.

18 JUDGE VANASKIE: Okay.

19 MR. SLATER: It says it right there in the email. And
20 from our review of the documents that we've been given from the
21 person who wrote the email, that email is not in his custodial
22 production nor has he ever been listed as a duplicate
23 custodian. So, you know, I don't know the best saying to throw
24 on this one, but the fact is that what's there may not be more
25 significant than what isn't there in many cases with ZHP.

1 You know, defense counsel says, well, you're not going
2 to get anything that's going to matter in that custodial file.
3 Well, I've been criticized during depositions more recently for
4 focusing on that email that shows they knew about the
5 contamination almost a year before they disclosed it to the
6 world. So ZHP doesn't think that document means much. We, on
7 our side, think it's pretty significant.

8 JUDGE VANASKIE: Right.

9 MR. SLATER. So I think that beauty is in the eye of
10 the beholder.

11 But roundabout, getting back to the answer, obviously,
12 we need all of the documents and a little time, and it just
13 seems like a practical thing to say is, we're still, obviously,
14 waiting for your decision on the deposition which is scheduled
15 to start in five days. We would think it would make a lot of
16 sense -- and I am not criticizing it because there's a lot
17 going on. What I'm saying is I think it would make sense for
18 us to seal the documents, get the custodial file, have some
19 time for our Chinese language reviewers to go through the
20 documents so that at least we know what's there before we take
21 the deposition. I'm just being practical.

22 JUDGE VANASKIE: Sure, sure.

23 All right. Let me ask another question while I have
24 both of you here and it's been in the back of my mind because
25 this is a very important matter. You're talking about the head

1 of a large corporation.

2 How relevant would his testimony be to what I expect
3 to be a summary judgment motion at the end of this initial
4 discovery phase? Let me ask from the plaintiffs' perspective.

5 MR. SLATER: Potentially very significant. I mean,
6 what the top -- the top person in the company knew -- and we
7 know from the testimony he was involved. You know, we know
8 that the Rule 26 cases that have protected -- and we have a
9 little problem with the concept of a, quote, unquote, apex
10 doctrine because, obviously, the Courts around the country,
11 some even say it doesn't even exist; they say it's just a Rule
12 26 standard and, you know, it's normal --

13 JUDGE VANASKIE: Right.

14 MR. SLATER: -- a normal analysis, but we already know
15 he was involved, we already know he had material involvement,
16 we already know from the testimony he did. So that's clear.
17 So what he knew and what he said and what he did and what he
18 knows what other people said and did, factual issues could be
19 raised through his testimony. And, honestly, at this point, in
20 terms of our claims, I think ZHP probably wants his testimony,
21 too, because when we get to the summary judgment phase, I can
22 promise you the plaintiffs will be filing affirmative motions
23 for summary judgment on liability on all claims as well,
24 including our right, potentially, to punitive damages. So his
25 testimony as the top executive in ZHP is, obviously, very

1 significant when it comes to the punitive damage claims as well
2 because, obviously, if we can -- we're going to want to show
3 top-down involvement, et cetera, and he becomes very important,
4 potentially, on all the claims. So, yeah, obviously, he's,
5 from our perspective, potentially very important.

6 JUDGE VANASKIE: All right. Mr. Goldberg.

7 MR. GOLDBERG: Your Honor, Mr. Chen's testimony, if he
8 is asked questions about the material facts at issue, will not
9 matter for summary judgment purposes.

10 Mr. Chen was not involved in the process change that's
11 at issue in this case back in 2011 that introduced the chemical
12 that causes the chemical reaction that is at issue.

13 He was the chairman of the company then. That was the
14 decision made at the very lowest level. I mean, you're talking
15 about a company that's 7,000 employees. Mr. Chen -- they have
16 not shown a single document, there has not been testimony among
17 the 17 employees, ten of whom are 30(b)(6) witnesses, that tie
18 Mr. Chen to the chemical process issues that started in 2011
19 with the process change.

20 The question of liability, the question of the claims
21 in this case will not turn on the testimony of Mr. Chen and
22 whether he had some knowledge about these things that may have
23 happened.

24 Plaintiffs are confusing, and it's -- they are -- they
25 are trying to conflate having general knowledge about things

1 that may happen in the company with having unique information
2 that is materially additive to the case that cannot be obtained
3 from any of the lower-level employees, not just the 17
4 employees that have been deposed. There are other employees
5 they can depose if they find unique information or other
6 information that they think they need. But they have not
7 identified a single fact in their papers that would be -- that
8 would create a question of fact for the jury on any of the
9 liability issues.

10 What was the purpose of the 17 depositions if they
11 haven't already created questions of fact? Mr. Chen, at the
12 very high level, would not create a question of fact for
13 summary judgment. That -- they've deposed the vice chairman of
14 the company, who's also the CEO of the U.S. entities. I mean,
15 we've covered this exhaustively.

16 JUDGE VANASKIE: No, you've covered it exhaustively.

17 MR. GOLDBERG: So I don't want to repeat -- I don't
18 want to repeat --

19 JUDGE VANASKIE: I wasn't --

20 MR. GOLDBERG: Yeah.

21 JUDGE VANASKIE: -- intending to have a reargument on
22 the matter. I just had some questions that would be helpful
23 for me to ask. And I know you're passionate about the issue
24 and I understand that.

25 MR. GOLDBERG: And I am passionate because I do think

1 this is truly a situation where the apex deposition applies.

2 This is a company of 7,000 people and we're talking
3 about a very highly technical issue. This is like -- and I
4 hate to do this, and we've thought about what are the
5 analogies, but, you know, this is like Bill Gates having some
6 information about the Microsoft Teams app that is being used
7 today. You know, this is the highest level and the micro --
8 you've got a guy who does the macro issues, and the issues in
9 this case involve the most micro issues in pharmaceutical
10 manufacturing. This is simply the introduction of a residual
11 solvent in a multistep manufacturing process of one of the 40
12 or 50 drugs that ZHP manufactures. And to expect that this
13 kind of information would flow up to the highest level of the
14 company is really not how big corporations work.

15 JUDGE VANASKIE: All right. Thank you.

16 Mr. Slater, anything else?

17 MR. SLATER: I feel like I have to just respond
18 very -- I hate when people say very briefly, but I will try to
19 do that. Caught myself there.

20 Two things: Mr. Chen is the head of the arm -- the
21 research and development arm at ZHP, which is Shanghai
22 Syncores, that developed the zinc chloride process. He is not
23 Bill Gates with no involvement in something. We've already
24 established that. It's very surprising that counsel would
25 continue these mantras that he had no involvement. We have

1 deposition testimony of documents that show he had involvement.
2 In fact, it was his plan to try to lower the costs as much as
3 possible to capture as much market share as possible. That's
4 what drove them to the zinc chloride process and, from our
5 perspective, is what drove them to not disclose it when they
6 realized there was NDMA in the valsartan because they didn't
7 want to have to scrap the zinc chloride process because they
8 were making so much money.

9 So I'm not going to go any further than that other
10 than I think our papers will refute what you just heard.

11 I will tell you something else, to go back to what
12 happened earlier, because I got some text messages from some
13 much smarter people on the plaintiffs' team than myself. An
14 air-gapped laptop is nothing technically significant or
15 complex. It's just a laptop that hasn't been attached to the
16 Internet yet. That's what I'm told. So that doesn't sound
17 like a big deal.

18 And, again, I'm going to come back to what I said
19 earlier with the timing. It is -- it is very, very
20 disappointing and frustrating that this is something that would
21 be dropped on yourself and us today, when Your Honor ordered
22 ZHP, however long ago it was, to take care of this. This
23 should have been brought to the Court's attention and to our
24 attention, frankly, a month, two months ago.

25 (Interruption.)

1 JUDGE VANASKIE: Someone spoke.

2 MR. SLATER: Camille, it was an accidental un-mute by
3 one of the lawyers.

4 MR. GEOPPINGER: That was an accident. My apologies,
5 Your Honor.

6 JUDGE VANASKIE: Is that Mr. Geoppinger?

7 MR. GEOPPINGER: Yes, it was, Your Honor.

8 JUDGE VANASKIE: Okay. It seemed like it had nothing
9 to do with what we were talking about, but okay. These things
10 happen.

11 All right. I know the arguments -- were you finished,
12 Mr. Slater?

13 MR. SLATER: I was, Your Honor. I was.

14 JUDGE VANASKIE: All right. Okay.

15 With respect to the production of the custodial file,
16 I'm at a loss, frankly. I'm told it's going to take to July
17 12th. I don't know what else to say about that. I'm not
18 exactly sure why it takes to July 12th. Maybe you want to go
19 over that again, Ms. Priselac.

20 MS. PRISELAC: Sure, Your Honor.

21 Just to correct a few things. I'm happy to talk or
22 argue with whoever is giving Mr. Slater this information from a
23 technical side because it's not true, what he just said. But
24 I'll move on from there.

25 You know, part of the issue is that, obviously, you --

1 I'm sure you understand, Your Honor, the companies that were
2 trying to sell this equipment to our vendor and to the client,
3 because they both tried to procure it, kept saying, oh, you'll
4 have it tomorrow, you'll have it tomorrow, you know, as any
5 sales company would. So that was putting us in a predicament
6 which left us only, you know -- we were kind of in flux, Your
7 Honor, which it would be hard to come to the Court and say, oh,
8 it's coming tomorrow when, you know, we were put in a really
9 difficult position as well. I understand the plaintiffs'
10 frustration. We were very equally frustrated. But we have
11 gone to an extraordinary length, essentially making our own
12 computers to get this done correctly.

13 So the second thing in terms of why it takes so long,
14 Your Honor, is that once this data is -- it needs to be
15 collected and -- it's isolated but it's not processed at the
16 site, ZHP. So what they're going to do next week, starting
17 Monday, is process all the data and make sure it gets onto a
18 software drive -- I'm sorry, a hardware drive that is not
19 connected to the Internet for security reasons, and then that
20 has to be taken to the reviewers in China, reviewed for state
21 secrets, and then export it to the United States so that our
22 Chinese language reviewers can -- our Chinese language
23 reviewers can review it for privilege, responsiveness and then
24 process it and give it to the plaintiffs.

25 Certainly, Your Honor, we're hoping that it would be

1 less than three weeks, but, you know, in our experience, you
2 know, the process of physically collecting this data, you know,
3 taking it, you know, to Shanghai from Linhai, having it
4 processed in a way that's not connected to the Internet, then
5 having the documents that can be exported to the United States,
6 exported to the United States, it just takes time.

7 JUDGE VANASKIE: Yes. And I guess, you know, it has
8 to be done in a manner that you're not connected to the
9 Internet at any time.

10 MS. PRISELAC: Exactly, and that's part of the
11 slowdown, Your Honor.

12 JUDGE VANASKIE: Sure is.

13 All right. Did you want to say anything else, Mr.
14 Slater?

15 MR. SLATER: No, Your Honor. I'm a realist.

16 JUDGE VANASKIE: Yeah, I think we have to give them
17 until July 12th. I think Ms. Priselac has presented a
18 compelling case of why it takes that long. I'm frustrated that
19 it won't be until July 12th, but I will say that it has to be
20 completed by July 12th. I don't want to come -- I'm an
21 optimist, too, so I'm hoping that by saying it has to be done
22 by then, it will be done by then as opposed to finding out that
23 something got stuck at Customs somewhere along the route.

24 MS. PRISELAC: Understood, Your Honor. And if for --
25 if that does happen, we will alert the plaintiffs and the Court

1 immediately.

2 JUDGE VANASKIE: Immediately, please. I want to be
3 kept abreast of this. All right.

4 We're still on ZHP, the supplemental production of
5 documents. What is the status of that?

6 MS. PRISELAC: Yes, Your Honor.

7 We substantially completed the production last week
8 per your order. We're just doing quality checks at this point.
9 Frankly, we were surprised to see the plaintiffs' letter
10 because they have not raised any issues whatsoever with us by
11 phone, by email, in any way to say that they felt that there
12 was some deficiency. And if you read between the lines here of
13 the letter, Your Honor, they really haven't pointed out a
14 deficiency.

15 The one thing they did ask in the letter, Your Honor,
16 was that ZHP basically identify every single document that
17 relates to every single request in their letter.

18 The plaintiffs have asked for similar relief from
19 Judge Schneider multiple times. Judge Schneider has rejected
20 and ruled against the plaintiffs on that issue several times,
21 mostly because of the nature of digital discovery, Your Honor,
22 makes that very difficult in the way these files are collected.
23 However, if the plaintiffs had brought this to our attention,
24 what I do think is a good middle compromise is that there are
25 certain hard-copy documents that were collected specifically

1 related to certain requests, and we would be happy to identify
2 those for the plaintiffs, Your Honor. However, to identify
3 every single digital document collected and line it up with one
4 of these requests we believe is overly burdensome and, quite
5 frankly, not in -- not in line with the ESI protocol
6 whatsoever.

7 JUDGE VANASKIE: All right. Mr. Slater.

8 MR. SLATER: Yes, Your Honor.

9 I'm not sure what counsel's talking about because this
10 is a -- this was a supplemental production that we -- that was
11 triggered by some significant issues that we found in the
12 productions through depositions and the review of the documents
13 and there were some agreed areas that were ordered to be
14 produced. I'm not understanding where the burden is to say,
15 for example, the documents regarding Min Li's phone are found
16 at Bates Number, you know, 1001 to 1002 or the custodial file
17 for Mr. Lin is Bates range this to this. I don't see where the
18 burden is and I think it would be very helpful because these
19 documents may turn out to be very important, we may be asking
20 for additional depositions, I don't know yet because we are
21 still reviewing; but I would think it would be beneficial to
22 both sides to be very clear on which documents match up to
23 which discovery request.

24 I don't really understand the burden argument because
25 there -- if you look at the requests again, and look at what's

1 been produced, I don't think that there could be a compelling
2 argument that there's any unfair burden. We just want to be
3 able to know what was produced in response to which request.
4 It makes sense.

5 JUDGE VANASKIE: Is it accurate that Judge Schneider
6 did not require that? That was early on in the process.

7 MR. SLATER: We've never had this type of an issue, so
8 this issue never came up. I think what counsel -- I'm trying
9 to -- I'm guessing, I suppose, or maybe counsel can tell you
10 what she's talking about because I know that there was an issue
11 with the production index for the overall entire production, so
12 maybe this is what counsel's referring to, where ZHP produced X
13 number of total documents. We asked to have a column on the
14 production index that said this Bates range is responsive to
15 this request for production, and Judge Schneider said, I'm not
16 going to make you do that; but that's not this situation where
17 you have a few discrete requests that are triggered by specific
18 issues coming up in the depositions.

19 JUDGE VANASKIE: All right. Ms. Priselac?

20 MS. PRISELAC: Sure, Your Honor. A couple things.

21 This is not a supplemental production. There were new
22 custodians added, there were new search terms added. So this
23 idea that we're somehow -- we're violating a prior order for
24 this production or that it's supplemental is just not true.

25 In terms of what Judge Schneider previously ordered,

1 what Mr. Slater just said was one of the times that Judge
2 Schneider denied that request, but also his general -- a couple
3 of additional times the plaintiffs had requested this type of
4 categorization. And the problem with that, Your Honor, is that
5 even in this new production, we've produced thousands of
6 documents that are collected by a custodian and then marked for
7 responsiveness in about 120 categories at this point, and that
8 would be -- our position is that to go through each and, you
9 know, match them up even with the plaintiffs' new letter, which
10 is not a short amount of requests, which is I believe
11 something, you know, more than ten requests, and if you add up
12 the sub-requests more than 20, you know, is overly burdensome
13 for us to have to go through every document and match them up
14 with the requests in their letter.

15 Now, I think the problem here, Your Honor, is, again,
16 if we would have had a meet and confer, the types of examples
17 Mr. Slater just said are actually quite easy to identify. For
18 example, the Bates range of a certain person's custodial file,
19 well, we could have easily given that to them through the
20 metadata and we would be happy to do so.

21 So, Your Honor, I think what Mr. Slater's examples
22 show is that we should actually have a meet and confer on this
23 before any order's entered.

24 JUDGE VANASKIE: Okay. Mr. Slater?

25 MR. SLATER: Yes, Judge.

1 I mean, I guess this is a chicken and the egg kind of
2 thing. We found it unfortunate that when we came into this
3 conference, we never even received confirmation from ZHP that
4 they believe their production to be substantially complete
5 until we saw their letter to Your Honor. We had to submit what
6 our issues were. Both sides knew when we exchanged issues on
7 Friday that we were going to submit positions on this. ZHP
8 didn't reach out to us, we didn't reach out to them. It didn't
9 seem -- because it was clear, we had no accounting, we didn't
10 know if they were done. They obviously didn't want to tell us.
11 So, I mean, it seems silly but at this point we would like to
12 know that there's an accounting of what's been produced.

13 JUDGE VANASKIE: Well, it seems to me that a meet and
14 confer could be productive, I'm not saying would but could be
15 productive. I think it's worth undertaking that effort rather
16 than me ordering it at the present time.

17 So what I will do is I will direct you to meet and
18 confer on the matters that were raised in your letter. All
19 right?

20 MR. SLATER: That's great, Judge.

21 MS. PRISELAC: Thank you, Your Honor.

22 MR. SLATER: I think we now know counsel has -- maybe
23 we could just get this confirmed for the record. Counsel has
24 said that the production is substantially complete pending
25 quality control, I think counsel said, issues. So I think it

1 would be good for the Court and for us to know, is that the
2 production or are there any more documents coming in response
3 to those requests because the deadline is passed.

4 JUDGE VANASKIE: All right. Ms. Priselac, is it
5 substantially complete?

6 MS. PRISELAC: Yes, Your Honor. You know, it's not my
7 practice to say I've met a deadline. So, yes, Your Honor it is
8 substantially complete.

9 JUDGE VANASKIE: All right. Very well.

10 The last thing -- I think maybe we're at the end of
11 the agenda but I may have missed something so I want to make
12 sure.

13 Obviously, I was pleased to get the letter in this
14 week that the motion on the Meridan and ToxRox documents was
15 withdrawn and the documents have been produced.

16 Is there anything else we need to discuss today?

17 MR. SLATER: I don't believe so from the plaintiffs,
18 Your Honor, unless anyone wants to overrule me.

19 JUDGE VANASKIE: Mr. Goldberg?

20 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

21 One thing that we did want to mention to Your Honor is
22 that Mr. Slater and I spoke earlier today about the plaintiffs'
23 motion for sanctions as to ZHP's deposition testimony.

24 JUDGE VANASKIE: All right.

25 MR. GOLDBERG: We had an earlier briefing schedule.

1 We have agreed to move out some of the dates in that schedule.
2 Both Mr. Slater and I have some summer vacation plans and we've
3 tried to work around those things.

4 What we have come up with, and we just wanted to alert
5 Your Honor, see if Your Honor's agreeable to it, is that the
6 ZHP parties would file their opposition brief on July 2nd and
7 perhaps if it -- if it's warranted, a motion -- a cross-motion
8 for sanctions; that given Mr. Slater's schedule in July, he's
9 planning to be away for a few weeks, we are going to have their
10 reply brief and, if necessary, an opposition on July 30th. We
11 have -- if necessary, ZHP would file a reply brief on a
12 cross-motion -- I'm sorry, on a cross-motion. I think, Adam --
13 Mr. Slater, I think that's one date we forgot to nail down.

14 But, Your Honor, what we -- what we had discussed was
15 if Your Honor was going to hear our argument on these papers
16 that it would be in the week of August 23rd. So the ZHP
17 parties, if we're going to file a reply brief could do so, say,
18 August 13th or August 20th, which would give the Court
19 sufficient time to have all of the papers in.

20 I think you're on mute, Your Honor.

21 JUDGE VANASKIE: I was. Now it was me on mute. There
22 was some outside noise. I wanted to try to prevent it from
23 coming in.

24 The schedule that you've outlined is fine with me. I
25 would ask you to put it in a letter so that it's documented or

1 even in the form of a proposed order so it's on the record.

2 But that is fine.

3 MR. GOLDBERG: Thank you.

4 JUDGE VANASKIE: And we'll look to arguments during
5 the week of August 23rd.

6 Now, of course, the motions continue to get filed.
7 And, obviously, the next one that I told you will be decided
8 will be the motion on Mr. Chen's deposition.

9 Is there a priority list of motions from the
10 plaintiffs' perspective for me to decide? Did you prioritize
11 them or no?

12 MR. SLATER: I have to be honest with you, Judge, from
13 my perspective, I know about the motion on Mr. Chen.

14 JUDGE VANASKIE: The Chinese state secret motion as
15 well.

16 MR. SLATER: That one as well. I'm trying to
17 remember. Trying to keep track of all our motions.

18 MR. GOLDBERG: I -- from the ZHP parties' standpoint,
19 I think those are the only two that are currently pending, Your
20 Honor.

21 JUDGE VANASKIE: All right. And I got a motion in on
22 Teva, I want to make sure I have that right, on the clawback
23 issue. I may have that -- yes, the clawback issue. Is
24 somebody here to address that? I'm wondering if that can be
25 expedited? We're talking about one document, three emails

1 being redacted. Do we have to go through the whole timeline to
2 get that resolved?

3 MS. LOCKARD: Your Honor, it's Victoria Lockard. Can
4 you hear me?

5 JUDGE VANASKIE: Yes, I can.

6 MS. LOCKARD: Hi. And I don't know if David Stanoch
7 is on for the plaintiffs. It looks like he is. But we would
8 not have a problem with expediting a briefing schedule on that.
9 We would like to get this ruled on. You know, obviously, our
10 concern is having the documents in the hands of plaintiffs, you
11 know. We just think we need to get it ruled on. So we're
12 happy to expedite our response to their motion. I don't know
13 if a reply is required or not, but we would need to build in
14 time for that if plaintiff insisted on filing a reply.

15 I will say it looked like, based on the clerk's entry,
16 that this was referred to our Magistrate judge --

17 JUDGE VANASKIE: Yes.

18 MS. LOCKARD: -- The Honorable Judge Williams. I
19 don't know if that was just a clerk's entry or if Judge
20 Williams will actually be hearing that so, you know, I would be
21 interested to know what your thought was on that.

22 JUDGE VANASKIE: My understanding is that I will be
23 hearing it. I will confirm with Magistrate Judge Williams on
24 that. I think that was just a clerk's entry.

25 MS. LOCKARD: Okay. No problems. And I know there is

1 an issue. This document, you know, it is just one document but
2 I believe that Mr. Stanoch was intending to use it with a
3 witness, one of our remaining deponents. So I don't mean to
4 speak for him but I think the other reason we need to get it
5 resolved is to know whether or not it will be used with this
6 particular witness, Jens Nassall, who is being deposed soon.

7 JUDGE VANASKIE: Ms. Lockard, when can you file your
8 brief?

9 MS. LOCKARD: Well, considering I'm not the one
10 drafting it, but to put the others on the spot, you know, I
11 would think sometime next week, fairly early, would be
12 reasonable. And then would Your Honor want to have a phone
13 conference on that? Are you planning to rule on --

14 JUDGE VANASKIE: I'd like to have a phone conference
15 because that will expedite a decision. I may simply do it on
16 the record. So if I could have the opposition brief by Monday.

17 MS. LOCKARD: Okay.

18 JUDGE VANASKIE: Do you want -- if you want, I will
19 give you until Tuesday.

20 MS. LOCKARD: My drafting party would be pleased with
21 that, so we'll take Tuesday.

22 JUDGE VANASKIE: All right. So we will ask to have
23 that by Tuesday. I'm blanking on the date now. June 21st?

24 MR. SLATER: Tuesday would be the 22nd.

25 JUDGE VANASKIE: 22nd. Okay. All right. June 22nd.

1 And would you all be available on -- we have a conference call
2 on the 25th? No?

3 MS. SMITH: Yes, Judge, yes.

4 JUDGE VANASKIE: That's what I thought. Thanks,
5 Loretta. Can we address it on June 25th?

6 MS. HILTON: Your Honor, Layne Hilton on behalf of the
7 plaintiffs. I don't know if my colleague, David Stanoch, was
8 planning on joining in.

9 I think the issue is that the deposition for which Ms.
10 Lockard referred of Mr. Nassall is actually on the 24th, which
11 would be Thursday. So we would ask if there would be a phone
12 conference regarding this particular document, we would like to
13 have it on Wednesday, if that would be possible.

14 JUDGE VANASKIE: That would be possible.

15 MS. LOCKARD: Your Honor, yes, I mean, I can say we're
16 happy to do that on Wednesday, but we've been discussing this
17 with Mr. Stanoch. This is a witness who's based in Germany and
18 has to leave the country to be deposed, but because of COVID
19 restrictions, he's had a difficult time trying to get out of
20 the country to get deposed. So I don't know that that
21 deposition is actually on for next week. It may have to be the
22 following week, but that --

23 JUDGE VANASKIE: We will still do it the 23rd.

24 MS. LOCKARD: Fine.

25 JUDGE VANASKIE: I will get you a time on the 23rd and

1 we'll -- I don't think it will take a long time, I don't think
2 it will take a lot and I think you'll have a decision on the
3 23rd as well.

4 MS. LOCKARD: Okay. Thank you, Judge.

5 JUDGE VANASKIE: All right.

6 MS. HILTON: Thank you, Your Honor.

7 JUDGE VANASKIE: So opposition brief on the 22nd and
8 argument on the 23rd. Okay?

9 Anything else for today? I know I am not supposed to
10 ask that question, Mr. Slater, but I always will.

11 MR. SLATER: I keep saying nothing else.

12 JUDGE VANASKIE: Okay. Anything else on your end, Mr.
13 Goldberg, or on the defense side?

14 MR. GOLDBERG: I don't believe so, Your Honor.

15 JUDGE VANASKIE: All right. And thank you, Ms.
16 Hilton, for letting us know about the schedule.

17 All right. We will be adjourned for today. Thank you
18 very much.

19 MR. SLATER: Thank you, Your Honor. Have a nice day.

20 JUDGE VANASKIE: Thanks.

21 MR. SLATER: Bye-bye.

22 (The proceedings concluded at 5:00 p.m.)

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.

3
4 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
5 Court Reporter/Transcriber

6 June 17, 2021
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